IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9124 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINODBHAI RAMNATH CHATURVEDI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR SANJIV DAVE for NANAVATI & NANAVATI for Petitioner(s) : 1,
MR SATYAM CHHAYA, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 02/02/2007

ORAL JUDGMENT

1. The short facts of the case are that Chhotabhai Shanabhai became the owner of the land admeasuring 4638 sq. mtrs., bearing Survey

No.3205/6/7 at Hirji Parti, Nadiad, District Kheda. On 22.6.1970, the said Chhotabhai Shanabhai sold the said land to one Chunibhai Kuberbhai Dalwadi. The entry pursuant to the sale deed was also entered in the revenue record being No.10778 dated 22.6.1970. On 11.9.1978, T.P. Scheme appears to have been sanctioned and the original land was given final plot No.462 in the Scheme by reconstitution. In 1989, the said Chunibhai Kuberbhai Dalwadi applied to the District Collector to convert the land for N.A. use and ultimately the permission came to be granted for converting the land for N.A. use by the District Collector by order dated 20.1.1990. It appears that after the plots were sold, on 30.4.1996, i.e. roughly more than 5½ years the proceedings were initiated by the State Government for exercising the revisional power against the order of the Collector for grant of permission of N.A. on various grounds, inter alia, that the permission was required to be obtained when the land was purchased by Chunibhai Kuberbhai from Chhotabhai Shanabhai

and other grounds were also stated for non-approval of the plan etc. Ultimately, the State Government passed the order on 24.7.1998, whereby the order of the Collector for grant of N.A. permission was set aside and the matter was remanded to the Collector. It is under these circumstances, the present petition.

2. I have heard Mr.Sanjiv Dave, learned Counsel appearing for the petitioner and Mr.Chhaya, learned AGP for the State.

3. It appears that there is no dispute on the aspect that the power is exercised by the State Government after the period of about more than five years. As regards the delay is concerned, it may vary from facts to facts, but if the situation has become irreversible to the extent that the rights of the parties are substantially altered in the manner that if the exercise of the power is permitted at a belated stage, not only great injustice would be caused, but the situation cannot be reversed, then in such circumstances, the delay cannot be leniently viewed and the authorities cannot be permitted

to exercise the power after unreasonable period of delay. At this stage, reference may be made to the decision of this Court in case of **"Rajul Co-op. Housing Society Limited. v. State of Gujarat and Ors."**, **reported in 1985(2) GLR, 1187**, wherein while considering the question of delay, this Court found that as the petitioner has already constructed the flats over the land and it is now not in a position to return the land to the Government, if it is desirous of recovering the price of the land at the revised rate, the exercise of the power after a period of about 5½ years was found as unreasonable and this Court followed the decision of the Apex Court in case of **"State of Gujarat v. Raghav Natha", reported in 10 GLR, 992; "Habib Nasin Khanji v State", reported in 11 GLR, 307; and "Bhagwanji Bawanji v. State", reported in 12 GLR, 156** for the exercise of power by the State Government under Section 211 of the Bombay Land Revenue Code.

4. More or less similar situation arises in the present case inasmuch as the transfer was

effected as back as on 22.6.1970 and the revenue entry was also effected during that period. Thereafter, the land is included in the T.P. Scheme and in 1989 when the application for conversion for N.A. use was made, at that stage also no objection was raised and the permission ultimately came to be granted on 30.1.1999. Thereafter, it appears that as stated on behalf of the plot holders and the said aspect is also recorded by the State Government, that all the plots pursuant to the N.A. permissions have already been disposed of and the original holder or his legal heirs were not holding any share or interest in the land. Not only that, but it was also represented before the State Government that a huge expense has been incurred and the construction is made. In spite of the said fact came on record, not only there is no discussion on the said aspects, but the State Government observed that if the wrong orders are passed, no time limit operates for exercise of the power and, therefore, the submissions are not accepted.

5. In my view, considering the facts and circumstances, it can be said that irreversible situation has arisen and not only that, but incidentally if the exercise of the power is permitted, it would result into upsetting the transaction of 22.6.1970 in the year 1996 and under the circumstances, I find that the exercise of the power by the State Government was after an unreasonable period of delay and, therefore, the impugned order cannot be maintained in the eye of law.

6. In the result, the impugned order of the State Government dated 24.6.1998 is quashed and set aside. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

2.2.2007 **(Jayant Patel, J.)**

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